

Appl. No. 10/777,079
Amdt. dated November 13, 2008
Reply to O.A. of October 8, 2008

REMARKS

In the Office action dated October 8, 2008, pending claims 1-6, 8-12 and 14-23 were rejected and claims 22 and 23 were allowed. Upon entry of this Amendment, claims 1-6, 8-12 and 15-23 are pending and under consideration in the present application, with claim 14 being cancelled and claims 1, 4, and 12 being amended. Further, as requested by the examiner, paragraph [0009] has been amended to correct a typographical error. The applicant also wishes to thank the Examiner for indicating claims 22 and 23 are allowable.

Applicant respectfully traverses and requests reconsideration and withdrawal of the rejection of claims 1-6, 8-11, 14-17 and 21 as anticipated by McGee et al. (WO 2004/082726) and claims 12 and 18-20 as obvious over McGee et al. in view of Zaragoza et al. (U.S. Patent No. 6,565,012).

According to the Office action, McGee et al. discloses a device having "a porous wick ... extending through the opening such that ... [a] capillary member ... having at least one diffusion ... surface [is] in communication with a portion of the wick and [is] detachable therefrom...."

However, nowhere in McGee is an evaporative device disclosed or suggested that comprises a capillary member that is movable such that the nonporous capillary channel is removable from communication with the portion of the wick as recited in amended claim 1; or a plurality of capillary plates that are movable such that the capillary channels of each are removable from communication with the portion of the wick extending outside of the container as recited in amended claim 4; or a capillary plate that is movable such that the one or more capillary pathways are removable from communication with the portion of the wick extending outside of the container as recited in amended claim 12; or a plurality of capillary plates are movable such that the capillary pathways of each are removable from communication with the portion of the wick extending outside of the container, and wherein the plural capillary plates are actuatable in a direction away from the wick to separate the capillary pathways thereof from communication with the portion of the wick exposed to the ambient air as recited in claim 15.

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In fact, McGee et al. states that the diffusion surface is not movable but is "mounted on the transfer member such that it extends essentially laterally therefrom" (McGee et al., page 2, lns 4-7), and is "attached thereto." (McGee et al., page 3, lns 4-6) Emphasizing the importance of maintaining this "attached" feature, McGee et al. further states that: "It is an important feature of this invention that the at least one diffusion surface extend essentially laterally from the transfer member." (McGee et al., page 4, lns 4-5) And more specifically, McGee et al. states that "the diffusion surface must contact the transfer member in such a manner that liquid transfer from the transfer member to the diffusion surface is facilitated." McGee et al. further emphasizes "that the ends of the surface capillary must directly and closely contact the surface of the transfer member." (McGee et al., page 4, lns 28-31) In view of this disclosure, the applicant respectfully contends that nowhere in McGee et al. is there any disclosure or suggestion of a movable member to allow the diffusion surface and the transfer member to be in movable communication as recited in the above-noted pending claims.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Schering Corp. v. Geneva Pharms., Inc.* 339 F.3d 1373, 1379 (Fed. Cir. 2003). Therefore, because not every element of claims 1-6, 8-11, 15-17 and 21 is disclosed in McGee et al., it follows that such claims are not anticipated by McGee et al.

In addition and for the same reason discussed above, neither McGee et al. nor Zaragoza et al. disclose or suggest the subject matter of claims 12 and 18-20, or that it would even be desirable to incorporate the subject matter of such claims in the device disclosed by McGee et al. or Zaragoza et al. To support a *prima facie* case of obviousness, an examiner must establish a finding that the prior art included each element claimed, although not necessarily in a single prior art reference Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* 72 Fed. Reg. 57,526 (Oct. 10, 2007). Therefore, it follows that claims 12 and 18-20 are not obvious over McGee et al. in view of Zaragoza et al.

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Reconsideration and allowance of the foregoing claims are respectfully requested. The examiner is encouraged to call the undersigned attorney to discuss the pending claims for the purpose of expediting this prosecution.

Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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